

REMARKS

Claims 1-39 were pending and examined an Office Action dated February 25, 2008, claims 1-39 were rejected. In response to the Office Action dated February 25, 2008, claims 1-39 were canceled without prejudice or disclaimer and new claims 40-78 were added. Please add new claim 79 and amend claim 40 as indicated herein. Support for claims 40-78 is found throughout the specification, for example, at pages 40-43, 54-55, 61-62, 74, 160, 172 and 213.

The Office Communication dated November 28, 2008 alleges that the Amendment and Response filed August 24, 2008 is non-responsive according to MPEP § 821.03 as the Amendment and Response filed August 24, 2008 “canceled all claims drawn to the elected invention” and presents “only claims drawn to a non-elected invention.” See Office Communication dated November 28, 2008, page 8. In the Office Communication, the claims are divided into Group I (claims 1-39) and Group II (claims 40-78). Accordingly, new claims 79 is added in response to the Office Communication dated November 28, 2008, which is similar to previously canceled claim 1. Hence, claims for the originally presented invention, Group I, are included in this Response.

It appears that the Official Communication is implementing a restriction requirement between Group I and Group II. However, clarification is respectfully requested as the Official Communication differently characterizes Group I and Group II. Initially Group I is defined as claims 1-39 and Group II is defined as claims 40-78. However, late the Official Communication indicates that claims 12-24 are withdrawn from consideration. From these conflicting statements, it is unclear which claims are currently withdrawn, and clarification is respectfully requested. Additionally, clarification that this Official Communication acts as

an “Elections/Restrictions” action as indicated on page 2 of the Official Communication is also respectfully requested.

If the Official Communication is requesting election of Group I or Group II, Applicants respectfully elect, with traverse, Group II for prosecution; however, it is unclear if this is viable in view of the text of the Official Communication, so new claim 79 is added which is based on the prior claims classified as Group I. In addressing the restriction, Applicants submit that an examination of the claims would not impose a serious burden on the Examiner. Both Group I and Group II address monitoring, capture and analysis of network traffic. Group II describes a specific type of network analysis by determining whether network traffic is priority or non-priority, while Group I recites analyzing data responsive to trigger conditions. Specific examples of trigger conditions are recited in Group II, for example in claims 77 and 78, where priority triggers and non-priority triggers are used in data analysis. Hence, failure to examine the claims as pending would pose a far greater burden on the Patent and Trademark Office by requiring a duplication of effort and resources.

However, if the Official Communication requires election of Group I, new claim 79 has been added as representative of Group I, as claims 1-39 were previously canceled. Claim 79 includes similar elements as claim 1, in addition to “each media module including a flow processor classifying the collected data as a priority flow or a non-priority flow and collecting data associated with traffic on the associated network segment.” Hence, claim 79 is patentably distinguishable over the cited references.

Claim 79 recites media modules which determine whether captured data is associated with a priority flow or a non-priority flow. This beneficially identifies priority data for

processing. In contrast, Sharon discloses an agent 14 which at most examines received frames and examines the source and destination address to determine whether a source or destination address is unknown (Sharon, col. 7, lines 7-15). The agent receives a command from a central management engine (CME) 12 to either begin collecting and transmitting data or stop data transmission and collection (Sharon, col. 7, lines 41-55). The CME 12 uses the collected data to determine placement of network agents within a network traffic topology map (Sharon, col. 3, lines 26-41). Hence, the CME 12 receives network data and analyzes the traffic flow between different network elements for correction and modification of traffic flow through a network topology (Sharon, col. 3, lines 45-46; col. 5, lines 26-29). Neither the agent 14 nor the CME 12 in Sharon associates the classified data with a priority flow or non-priority flow.

Elliott merely discloses a hybrid network which uses telephony routing information and internet protocol address information to transfer information across the internet (Elliott, col. 1, lines 27-33). However, Elliott also fails to disclose media modules including “a flow processor classifying the collected data as a priority flow or a non-priority flow and collecting data associated with traffic on the associated network segment,” as claimed. Thus, Elliott fails to remedy the deficient disclosure of Sharon as the references, both alone and in combination, do not disclose or suggest the claimed invention.

Sistanizadeh discloses a service level manager allowing users to obtain service through a network and providing report options about user network service (Sistanizadeh, col. 20, line 65 to col. 21, line 14). The service level manager in Sistanizadeh provides a user interface and network topology for improving network operation support, but Sistanizadeh fails to disclose media modules including “a flow processor classifying the collected data as a

priority flow or a non-priority flow and collecting data associated with traffic on the associated network segment,” as claimed. Thus, Sistanizadeh fails to remedy the deficient disclosure of Sharon as the references, both alone and in combination, do not disclose or suggest the claimed invention.

Hence, claim 79 is patentably distinguishable from the cited references, both alone and in combination. Therefore, allowance of claim 79 is respectfully requested.

Conclusion

In sum, it is respectfully submitted that the claims, as presented herein, are patentably distinguishable over the cited references (including references cited, but not applied) and are in condition for allowance. Favorable action is solicited.

Respectfully Submitted,
MIKE MORAN, ET AL

Date: December 28, 2008

By: /Brian G. Brannon/

Brian G. Brannon, Attorney of Record
Registration No. 57,219
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Phone: (650) 335-7610
Fax: (650) 938-5200

24523/09665/DOCS/2010288.1